United Nations CAT/C/BFA/CO/1

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on the initial report of Burkina Faso*

1. The Committee considered the initial report of Burkina Faso (CAT/C/BFA/1) at its 1184th and 1187th meetings (CAT/C/SR.1184 and 1187), held on 6 and 7 November 2013, and adopted the following concluding observations at its 1202nd and 1203rd meetings (CAT/C/SR.1202 and 1203), held on 19 November 2013.

A. Introduction

2. The Committee welcomes the initial report of Burkina Faso, which is in conformity with the Committee's guidelines on reporting. It regrets, however, that the State party submitted the report 12 years late, which prevented the Committee from assessing implementation of the Convention by the State party.

3. The Committee welcomes the frank dialogue that it held with the high-level delegation of the State party and the replies given orally to the Committee members' questions during the consideration of the report.

B. Positive aspects

4. The Committee notes with appreciation that, since the Convention's entry into force in February 1999, the State party has ratified or acceded to the international instruments listed below:

(a) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 26 November 2003;

(b) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 10 October 2005;

(c) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 31 March 2006 and 6 July 2007, respectively;

* Adopted by the Committee at its fifty-first session (28 October–22 November 2013).

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(d) The Convention on the Rights of Persons with Disabilities and its Optional Protocol, 23 July 2009;

(e) The International Convention for the Protection of All Persons from Enforced Disappearance, 3 December 2009;

(f) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 7 July 2010;

(g) The Rome Statute of the International Criminal Court, 16 April 2004;

(h) The United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 15 May 2002.

5. The Committee appreciates the efforts that the State party has made to review its legislation in the areas related to the Convention, in particular its adoption of:

(a) Act No. 029-2008/AN on combating human trafficking and related practices, (2008);

(b) Act No. 042-2008/AN on the status of refugees in Burkina Faso (2008);

(c) Act No. 062-2009/AN on the establishment of the National Human Rights Commission (2009), amended in 2010 by Act No. 039-2010/AN.

6. The Committee also welcomes the steps taken by the State party to change its policies, programmes and administrative procedures to give effect to the Convention, in particular:

(a) The establishment of the National Committee to Combat the Practice of Excision and the adoption of the National Action Plan 2008–2012, entitled "Zero tolerance for female genital mutilation";

(b) The adoption of the National Action Plan to Combat the Worst Forms of Child Labour, in June 2012;

(c) The adoption of the National Action Plan for Human Rights and the Promotion of Civic Values 2012–2022.

7. The Committee furthermore welcomes the cooperation that the State party has extended to the special procedures of the Human Rights Council, particularly the Special Rapporteur on the human rights of migrants and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, during visits to Burkina Faso. The Committee encourages the State party to invite the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to visit the country.

C. Main subjects of concern and recommendations

Definition and classification of torture as an offence

8. While the Committee takes note of the information provided by the State party concerning the draft bill on the definition, prevention and punishment of the offence of torture and related practices, it is concerned by the fact that, 14 years after acceding to the Convention, the State party has yet to define or to classify torture as a separate offence in its legislation. The Committee is concerned by the fact that acts of torture carry the penalties prescribed, among other things, for malicious wounding, assault and battery or causing bodily harm or injury, which suggests that the penalties do not take into account the

grave nature of acts of torture. The Committee continues, therefore, to be concerned by the existence of legal loopholes that allow a situation of impunity for acts of torture to continue, insofar as the bill has neither been adopted nor promulgated (arts. 1 and 4).

The State party should step up its efforts to revise the country's Criminal Code so as to make torture a separate offence. It should at the same time ensure that the definition of torture is consistent with the one set out in article 1 of the Convention. In the light of its general comment No. 2 (2008) on the implementation of article 2 by States parties, the Committee is of the view that if there are significant discrepancies between the definition of torture provided in domestic law and that found in the Convention, this may result in actual or potential loopholes for impunity. The State party should ensure that the penalties prescribed will be in proportion with the gravity of the acts committed.

Absolute prohibition of torture

9. The Committee notes with concern that the law of the country does not absolutely prohibit torture under any and all circumstances and that acts of torture were reportedly committed during the sociopolitical crisis in 2011. It furthermore regrets that there are no legal provisions stating that there shall be no statute of limitations for the offence of torture (art. 2).

The State party should enact legislation against torture so as to establish an absolute prohibition of torture, stating that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. The State party should also establish that there shall be no statute of limitations for the offence of torture.

Allegations of torture and ill-treatment

10. The Committee remains gravely concerned by reports that law enforcement officers have perpetrated acts of torture and ill-treatment either while questioning people at police or gendarmerie stations or during operations to quell peaceful demonstrations. The Committee remains concerned by the fact that several such acts have gone unpunished, as in the cases of David Idogo, Dié Kambou, Etienne Da, Moumouni Isaac Zongo and Ousseni Compaore. The Committee is also concerned by the absence of legal provisions establishing that statements or confessions obtained under torture are inadmissible in court, except when such a statement is invoked as evidence against a person accused of torture (arts. 2, 11, 15 and 16).

The State party should:

(a) Take immediate and effective action to prevent acts of torture and ill-treatment and put an end to the impunity enjoyed by several of the alleged perpetrators of such acts. In this connection, it should promptly conduct thorough, independent and impartial investigations into all allegations of torture and ill-treatment and prosecute the perpetrators of the aforementioned acts;

(b) Make police and gendarmerie officers aware of the absolute prohibition of torture and of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; and

(c) Ensure that a provision is included in the legislative amendments currently being introduced so that statements made as a result of coercion or torture may not be invoked as evidence in any court proceedings. The State party should make sure that judges are instructed and aware that it is unconstitutional to obtain statements through the use of torture, that such statements are inadmissible and that

they have an obligation to initiate an investigation when they receive allegations of acts of torture.

Fundamental legal safeguards

11. The Committee is concerned by the fact that persons in detention are not afforded full and fundamental legal safeguards from the outset of deprivation of liberty, in particular that they are not granted the legal right to the assistance of a lawyer during police investigations, on the grounds that such investigations are secret. The Committee is also concerned about the fact that suspects might not always be afforded the opportunity to contact their relatives or a close family member, on the same grounds. The Committee is also concerned by the fact that a person can be held in police custody for up to 15 days without being presented to a court if he or she is suspected or accused of involvement in organized crime (arts. 2, 11, 12 and 16).

The State party should:

(a) Take all necessary measures to ensure, in law and in practice, that all persons who are deprived of their liberty are afforded fundamental legal safeguards from the outset of police custody, in the light of the Committee's general comment No. 2 (2008) on the implementation by States parties of article 2, namely:

(i) The right to be informed of the reasons for the arrest in a language that they understand;

(ii) Access to a lawyer from the outset of deprivation of liberty and, if necessary, to legal assistance;

(iii) The opportunity to have a medical examination by an independent physician of their choice;

(iv) The right to contact a family member or close acquaintance; and

(v) The right to be presented before a judge within 48 hours.

(b) Expedite the revision of its Code of Criminal Procedure in order to bring it into line with international human rights standards. The State party should provide additional financial and human resources to the judiciary, including resources for the Legal Assistance Fund; and

(c) Revise Act No. 017-2009/AN of 5 May 2009 on organized crime with a view to significantly reducing the length of time that suspects are held in police custody and thus prevent any infringement of the fundamental legal safeguards that are accorded to all persons who are deprived of their liberty.

Investigations and prosecutions

12. The Committee is concerned by the fact that no investigations have been conducted by the State party into many alleged acts of torture and ill-treatment which, in some cases, have reportedly resulted in the deaths of persons in detention. The Committee is also concerned that no prosecutions have been brought in the cases of the death in detention or fatal shootings of Moumouni Zongo, Romuald Tuina, Ouedraogo Ignace, Ouedraogo Lamine, Halidou Diande, Arnaud Some and Mamadou Bakayoko. The Committee is also concerned by reports of hazing and other forms of ill-treatment being carried out during military training (arts. 12, 13 and 16).

The State party should:

(a) Take appropriate measures to ensure that thorough, independent and impartial investigations are conducted into all reports of alleged torture and ill-

treatment by an independent and impartial body, that the perpetrators are prosecuted and, if convicted, are given sentences that are in proportion with the gravity of the offence, and that the victims or their families receive appropriate compensation and redress;

(b) Investigate the individual cases mentioned by the Committee and inform the Committee of the outcome of investigations undertaken and of criminal or disciplinary proceedings; and

(c) Take steps to prevent hazing of any kind in the army and ensure that all complaints about hazing or deaths of recruits in non-combat situations are investigated promptly and impartially, that the perpetrators are prosecuted and the victims compensated.

Case of Moussa Dadis Camara

13. The Committee takes note of the information concerning the absence of any request from Guinea for the extradition of Moussa Dadis Camara, the former President of that country, for whom, according to the findings of the international Commission of Inquiry for Guinea established by the Secretary-General in October 2009, there are sufficient grounds for the presumption of direct criminal responsibility, inter alia for the massacre and torture of demonstrators in Conakry during the events of 28 September 2009 (S/2009/693, annex, paras. 118 to 125 and 215). The Committee is concerned about the fact that the head of the delegation of the State party maintained that in the absence of an extradition request, Burkina Faso was not competent to prosecute Mr. Camara. The Committee considers that such a position is inconsistent with article 6, paragraph 1, of the Convention, which calls for States parties to conduct criminal proceedings or extradite any person accused of acts of torture (arts. 6 and 7).

In the absence of an extradition request, the State party should prosecute all persons responsible for acts of torture or other international crimes who are present in its territory, including the former President, Moussa Dadis Camara, in keeping with its obligations under the Convention and the other international instruments that the State party has ratified. The State party should cooperate with Guinea in the framework of the international request for judicial assistance that it has issued so as to allow judges in Burkina Faso to question Mr. Camara about the massacre in which he was allegedly involved.

Direct application of the Convention by the domestic courts

14. The Committee regrets the lack of information about the direct application of the Convention by the domestic courts, having regard to article 151 of the Constitution, which states that international treaties ratified by Burkina Faso take precedence over domestic laws. It regrets that no information has been provided about cases where the Convention has been invoked or applied by the State party's courts (arts. 2 and 12).

The State party should continue to provide training on the Convention that is targeted in particular at judges, magistrates, prosecutors and lawyers and designed to familiarize them with the provisions of the Convention which they will be able to invoke directly in court. The State party should compile and provide information about specific cases where the Convention has been directly invoked or applied.

National Human Rights Commission

15. Notwithstanding the efforts made by the State party to adopt a law establishing the National Human Rights Commission, the Committee regrets that the Commission's accreditation with the International Coordinating Committee of National Institutions for the

Promotion and Protection of Human Rights has expired. The Committee is concerned about the lack of resources that prevent the Commission from being operational (art. 2).

The State party should establish a separate budget for the Commission to allow it to function properly and to guarantee its independence. The State party should ensure that the Commission has sufficient human and financial resources to carry out its mandate, in conformity with the Paris Principles (General Assembly resolution 48/134 of 20 December 1993, annex). It should also request accreditation for the Commission from the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

National preventive mechanism

16. The Committee regrets that the State party has not established a national preventive mechanism since ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in July 2010 (art. 2).

The State party should expedite the establishment of a national preventive mechanism and allocate the necessary human and financial resources to enable it to carry out its functions effectively and independently, in line with the relevant provisions of the Optional Protocol and with the basic principles of the guidelines on national preventive mechanisms of the Sub-Committee on Prevention of Torture (CAT/OP/12/5).

Independence of the judiciary

17. The Committee remains concerned by reports that the judiciary is not independent of the executive branch, in particular that the Higher Council of the Judiciary remains under the authority of the executive. It is concerned by a number of reports of corruption pervading the judiciary, notwithstanding the action taken by the State party to correct this situation. The Committee is also concerned about the refusal in 2009 (A/HRC/10/80, para. 100) of the recommendation in paragraph 58 (a) of the report of the Working Group on the Universal Periodic Review, requesting the State party to make every possible effort to ensure that the justice system can operate independently and that all political influence on the legal system is eliminated (arts. 2 and 12).

The State party should:

(a) Take appropriate measures to guarantee and protect the judiciary's independence and ensure that the judiciary, including the Higher Council of the Judiciary, is able to carry out its functions free from any pressure or interference on the part of the executive, in line with the Basic Principles on the Independence of the Judiciary (General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985);

(b) Provide the judiciary with the human and financial resources that it needs to guarantee its independence by ending any political influence on the judicial system and combating corruption more assiduously.

Redress

18. While noting that article 3 of the Code of Criminal Procedure allows for victims to sue for damages in criminal proceedings, the Committee regrets that no redress has been afforded by the courts of the State party to victims of acts of torture or ill-treatment. The Committee also regrets that rehabilitation measures, including medical treatment and social rehabilitation services, have not been established for victims of torture (art. 14).

The State party should take appropriate measures to ensure that victims of acts of torture and ill-treatment receive full and fair redress and the fullest possible rehabilitation. It should provide detailed information on the follow-up given to such cases involving compensation for victims of torture or ill-treatment.

The Committee draws the State party's attention to general comment No. 3 (2012), concerning the implementation of article 14 by States parties, in which the Committee explains and clarifies the content and scope of the obligation of States parties to ensure and provide full redress to victims of torture or ill-treatment.

Prison conditions

19. Despite the efforts made by the State party to build new prisons, the Committee remains deeply concerned by the poor conditions in the country's prisons, including insanitary conditions which reportedly have caused several deaths. It also regrets that the State party has not made sufficient use of non-custodial measures to ease overcrowding in prisons. The Committee is also concerned that there is no effective system for separating inmates by category (arts. 2, 11 to 14 and 16).

The State party should step up its efforts to improve prison conditions in line with international standards and with the Standard Minimum Rules for the Treatment of Prisoners. It should inter alia:

(a) Significantly reduce prison overcrowding, in particular in the prisons of Bobo-Dioulasso, Fada N'gourma, Ouagadougou and Tenkodogo, by making greater use of non-custodial measures, in the light of the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);

(b) Ensure that prisoners have access to health care, a proper and varied diet and hygienic conditions;

(c) Ensure that young prisoners are kept separate from adults, untried prisoners from convicts and women from men;

(d) Establish an effective, independent and confidential mechanism for lodging complaints about conditions of detention, including any ill-treatment, and ensure that thorough, impartial and independent investigations are conducted into any and all complaints;

(e) Strengthen judicial supervision of prison conditions; and

(f) Guarantee that the National Human Rights Commission, non-governmental organizations and the future mechanism for the prevention of torture have unhindered access to all places of detention through, in particular, unannounced visits and the ability to speak with prisoners in private.

Orders from a superior officer

20. While taking note of Decree No. 2004-077/SECU/CAB of 27 December 2004 on the code of conduct of the national police force, which stipulates that subordinates must comply with instructions from their superiors except where an order is manifestly unlawful and would seriously jeopardize the public interest, the Committee remains concerned that these provisions only apply to the national police and do not offer subordinates who refuse to obey such an order protection against retaliation by superior officers (art. 2).

The State party should guarantee for all law enforcement officers the right, both in law and in practice, as subordinates to refuse to execute an order from their superior officers that would result in a contravention of the Convention. The State party should

develop a mechanism to protect from reprisals subordinates who refuse to obey orders from a superior officer if they would result in a contravention of the Convention.

Customary practices that are harmful to women and violence against women

21. The Committee takes note of the increased efforts made by the State party to combat female genital mutilation. However, it remains concerned that neither this practice, nor other discriminatory practices that are harmful to women, such as forced and early marriages and levirate and sororate marriages, have stopped. The Committee also remains concerned by reports that some elderly women have been accused of witchcraft and thus subjected to physical and verbal violence and rejected by their community, and are now housed in shelters (arts. 2, 12 to 14 and 16).

The State party should intensify its efforts to combat customary practices that are harmful to women, including female genital mutilation and forced marriage, inter alia by stepping up campaigns to alert the public to the harmful effects of certain customs that are detrimental to women. It should continue its efforts to provide care for elderly women who are accused of witchcraft and ensure that all possible measures are taken to help such women reintegrate into society. The State party should also prosecute the perpetrators of violence against women and compensate the victims.

Violence against children

22. While noting the efforts of the State party to protect children's rights and, in particular, to protect children against trafficking and similar practices, the Committee remains concerned by the lack of information about measures taken to combat the exploitation of *talibé* and *garibou* street children in begging and the economic exploitation of children in gold mines and in private homes. The Committee also remains concerned by reports that children continue to be subjected to corporal punishment in the home (arts. 2, 12 and 16).

The State party should:

(a) Prosecute any persons who force children to beg and apply the penalties on them that are set out in the Criminal Code, establishing a monitoring, complaints and assistance mechanism for such children and organizing campaigns to raise awareness among parents and those who run Koranic schools of the harmful effects of begging on children;

(b) Put an end to the economic exploitation of children in gold mines and in private homes by taking all necessary measures to combat and eliminate these practices;

(c) Conduct campaigns to raise awareness of the harmful effects of corporal punishment on children; and

(d) Revise its legislation to include a prohibition on corporal punishment in the home.

Juvenile justice

23. The Committee is concerned by reports that the juvenile justice system does not function properly and regrets the lack of information on whether or not a system of non-custodial penalties for minors is in effect (arts. 2, 10 and 16).

The State party should:

(a) Step up its efforts to ensure the proper functioning of the juvenile justice system through the allocation of adequate human and financial resources and the training of qualified staff;

(b) Ensure that minors are detained only as a last resort and for the shortest possible period and use non-custodial measures for minors who are in conflict with the law; and

(c) Ensure, furthermore, that minors who are deprived of their liberty are afforded full legal safeguards and, if convicted, are held separately from adults in all prisons throughout the country, in the light of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines).

Death penalty

24. While it notes that the State party has not applied the death penalty since 1988 and that an official moratorium has been in effect since 2007, the Committee regrets that the abolition of the death penalty has not yet been formally embodied in the law and that, according to non-governmental sources, at least 10 prisoners are on death row (arts. 2 and 16).

The Committee encourages the State party to continue to make the public aware of this issue and to consider the possibility of abolishing the death penalty and ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

Situation of refugees

25. While it appreciates the efforts of the State party to host a large number of refugees, particularly Malian refugees who arrived following the outbreak of conflict in their country, the Committee nevertheless remains concerned because the Appeals Committee, which should offer asylum seekers the opportunity to appeal against adverse decisions, is not yet operational. It also remains concerned by the fact that persons can be refused refugee status if they are accused of lesser offences or of serious crimes. The Committee also notes with regret the difficulties that refugees trying to enter the job market face, notwithstanding the efforts made by the State party (arts. 2, 3 and 16).

The State party should expedite efforts to allow the Appeals Committee to operate effectively in order to enable asylum seekers to exercise their rights and thus to prevent any possible abuses. Where an asylum seeker is in conflict with the law, the State party should initiate the necessary investigation and prosecution procedures while at the same time considering the applicant's request for international protection in accordance with the Convention relating to the Status of Refugees. The State party should also ensure that the 2008 Act on the rights of refugees, including the right to work, is enforced and should continue to raise public awareness in this regard.

Mob justice

26. The Committee remains concerned by reports of mob attacks against thieves and other alleged offenders by members of the general public, presumably due to a lack of confidence in the judicial system. The Committee is particularly concerned by reports that such mob attacks have resulted in the death of alleged offenders and, in some cases, have taken place in front of police officers (arts. 2 and 16).

The State party should take appropriate measures to put a stop to mob attacks and lynching, by conducting information and education campaigns on the need to eliminate such practices and by prosecuting and punishing any perpetrators. It should furthermore take steps to guarantee the credibility of the judicial system and to develop a community-based justice system.

Training

27. The Committee takes note of the information provided by the State party about the talks on the Convention that are held each year for students of the National Police Academy, the National School for Non-Commissioned Officers of the Gendarmerie and the Military Academy and for officers currently working for the criminal investigation service. However, it regrets that no training on the Convention or on the detection of acts of torture is offered to judges, prosecutors or forensic doctors. It notes with interest that a training manual for the police and the gendarmerie has been produced in collaboration with the Danish Institute for Human Rights. However, the Committee regrets that the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) is not used in the above-mentioned training and that the courses have not had any real impact in terms of reducing the incidence of torture in the State party (art. 10).

The State party should:

(a) Reinforce the training programmes on the Convention that it offers to civilian and military law enforcement officers and extend them to judges, prosecutors, lawyers and medical and prison staff;

(b) Include the Istanbul Protocol in these training programmes so that the trainees, particularly medical staff, will be better equipped to detect and document signs of torture and ill-treatment; and

(c) Assess the effectiveness of the training courses and their impact on compliance with and the implementation of the Convention, and carry out public awareness campaigns on the prevention and prohibition of torture.

Lack of statistical data

28. The Committee regrets the lack of comprehensive and substantiated data on complaints, investigations, prosecutions and convictions for acts of torture or ill-treatment inflicted by law enforcement officials, military officers or staff of prisons or psychiatric facilities. It also regrets the lack of comparable data on violence against women, juvenile justice, corporal punishment, and the trafficking of persons, particularly women and children.

The State party should compile the above-mentioned data to allow for an effective assessment of the implementation of the Convention at the national level and to help with the identification of targeted measures to prevent and effectively combat torture, ill-treatment and all forms of violence against women and children. It should also provide statistics on redress, including compensation, and on rehabilitation mechanisms for victims.

Other issues

29. The Committee encourages the State party to consider making the declarations under articles 21 and 22 of the Convention, thereby recognizing the competence of the Committee to receive and consider inter-State and individual communications.

30. The State party is encouraged to disseminate widely the report submitted to the Committee, as well as the present concluding observations, in appropriate languages, through official Internet sites, the media and non-governmental organizations.

31. The Committee requests the State party to provide, by 22 November 2014, information on the follow-up given to the following recommendations: (a) the introduction or strengthening of legal safeguards for detainees; (b) the prompt instigation of impartial and effective investigations; and (c) the initiation of proceedings against suspects and sentencing of perpetrators of acts of torture or ill-treatment (see paragraphs 10, 11 and 12, above). The Committee furthermore requests the additional information on redress and compensation for victims of torture or ill-treatment mentioned in paragraph 18, above.

32. The Committee invites the State party to submit its next periodic report, which will be its second one, by 22 November 2017. In this respect the Committee invites the State party to agree, by 22 November 2014, to submit that report under the optional procedure whereby the Committee sends the State party a list of issues prior to the submission of its periodic report. The replies to the list of issues will constitute the State party's second periodic report under article 19 of the Convention.